

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|              |   |                 |                       |
|--------------|---|-----------------|-----------------------|
| Appl. No.    | : | 09/927,972      | Confirmation No. 5997 |
| Applicant    | : | Gandy, et al.   |                       |
| Filed        | : | August 10, 2001 |                       |
| TC/A.U.      | : | 2163            |                       |
| Examiner     | : | Linh Black      |                       |
|              |   |                 |                       |
| Docket No.   | : | 1904.101        |                       |
| Customer No. | : | 52529           |                       |

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF MARK VAN DE CASTEELE  
SUBMITTED UNDER 37 CFR § 1.132

Dear Sir:

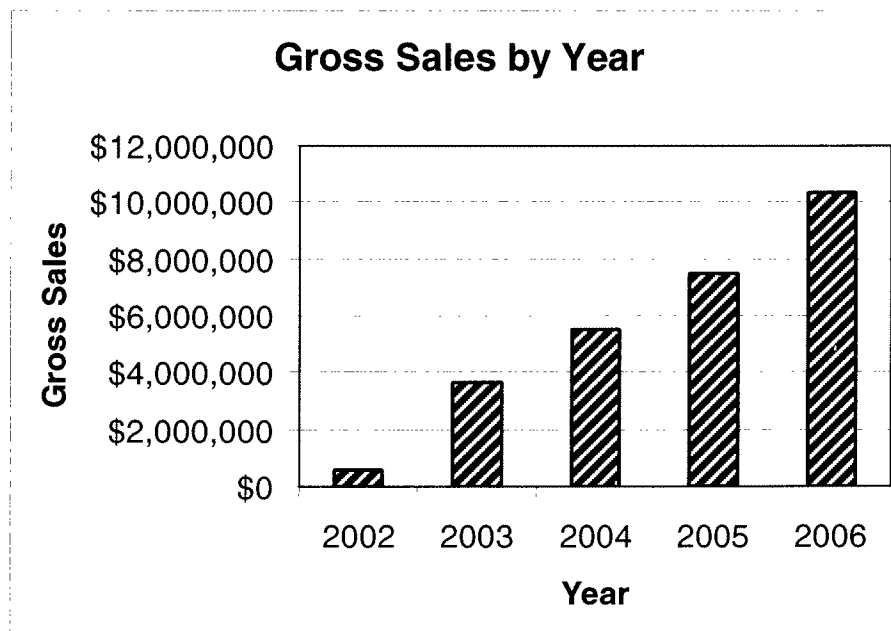
This Declaration is being provided, in connection with the above-identified patent application and related Office action dated December 28, 2006, for the purpose of overcoming the rejection of Claims 1, 5, 9-14, and 35-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Pub. No. US 2001/0029322 to Iliff (hereinafter "*Iliff*") in view of U.S. Patent No. 6,154,726 to Rensimer et al. (hereinafter "*Rensimer*"); to overcome the rejection of Claims 15-17 under 35 U.S.C. § 103(a) as being unpatentable over *Iliff* and *Rensimer*, and further in view of U.S. Patent No. 6,871,140 to Florance et al.; to overcome the rejection of Claims 27-31 under 35 U.S.C. § 103(a) as being unpatentable over *Iliff*, *Rensimer*, and further in view of U.S. Patent Pub. No. US 2002/0002502 to Maes et al.; and to further facilitate full allowance of all of Claims 1, 5, 9-17, and 27-55.

Accordingly, I, Mark Van De Castele, being duly sworn, on oath depose, state, and declare as follows:

1. I am over the age of 21 and competent to make this Declaration.
2. I reside in the state of Texas.
3. I am and have been the Vice President and Chief Financial Officer of T-Soft, LLC, the general partner of T-System Technologies, Ltd. since May 22, 2002, and am very familiar with the computer template chart product which corresponds to the invention claimed in the subject patent application.
4. The commercial business of T-System Technologies, Ltd. is primarily the development and sale of computer template charts, as recited in Claims 1-55 of the subject application.
5. The T-System computer template chart product is marketed under the trademark T-SYSTEM<sup>EV</sup>, registered in 2002.
6. The T-System computer template chart product is used by over 123 customers in the United States.
7. The commercial products correspond to the invention described in Claims 1-55 of this patent application. In particular, please note in the following, the similarity between the figures from the subject patent application, the claimed elements, and screen shots of the product marketed:

| Patent Application | Claimed Element   | Screen Shots of Product |
|--------------------|---|-------------------------|
| Figs. 7-8          | Templates for selection by a user                             | Exhibits A - B          |
| Figs. 9A-15        | Template for abdominal pain with inquiries selectable by user | Exhibits C – G          |
| Fig. 16            | Report  | Exhibit H               |
| Figs. 17-19        | Template and sub-template with modifiers selectable by user   | Exhibits I – K          |
| Fig. 20            | Report  | Exhibit L               |

8. The template chart product was first introduced commercially to the market in 2002, and since that time, gross sales of only the invention as claimed, and no other products offered by T-System Technologies, Ltd., have, on average, more than doubled every year, as depicted by the following chart



9. In the four years since the introduction of the template chart product in 2002, T-System's share of the emergency department physician documentation market has increased from zero (in mid-2002) to 27% (in 2006), making Applicant's product the most used template charting software in emergency medicine. The remaining market share (63%) is shared by approximately nine other products.

10. There are a number of important features of the T-System template charts that are highly appreciated by users. For example, for a particular case, users may select a template from a list of templates, which selected template includes inquiries for most items for which medical data is needed.

11. Another feature appreciated by users is the ability to “drill down” on selected medical inquiries to sub-templates which provide a number of “modifiers” which may be associated with the selected medical inquiry to provide additional detail relating to the selected inquiry. When the sub-template is closed, the modifiers remain with the inquiry on the template.

12. A further feature appreciated by users is the ability of the template chart product to readily generate an easily-readable report of the data entered by a user.

13. As a result of the foregoing important features of the subject invention, users are able easily, quickly, and accurately to enter medical data into a computer database, from which reports may readily be automatically generated. Exposure to liability for omissions is also reduced since inquiries needed for most diagnoses are included on the templates.

14. The commercial success of T-System’s template charts has not been the result of consumption by purchasers previously “tied” to T-System, as evidenced by the fact that T-System was formed to develop and market the template chart recited in Claims 1-55 of the subject patent application, and consequently, had no customer base prior to the invention which could be said to be “tied” to T-System.

15. Furthermore, commercial success of T-System’s template charts was not the result of heavy promotion or advertising, or other business events extraneous to the merits of the invention set forth in the claims. More specifically, there have been no “give-aways” of the product defined by the claims, or any other inducements or concessions in selling the product defined by the claims. Still more specifically, in 2006 approximately 2-5% of sales have been spent on marketing, which is low in this industry in which mature companies spend about 10-20% of sales on marketing. Furthermore, the advertising conducted served primarily to make the

industry aware of the product, because this is not the kind of product that can be sold by advertising hyperbole.

16. Commercial success of T-System's template charts has been the result of the advantageous usability, automated report generation, reduced risk of liability, and economic results attained by the subject matter set forth in the claims of the application, which I have read and understand.

17. In summary, I declare that T-System Technologies, Ltd., whose commercial business is primarily the development and sale of computer template charts as recited in Claims 1-55 of the subject application, is an increasingly successful company. Our business has grown from zero in 2002 to gross sales of \$10,327,062 in 2006, a period of just four years, with a corresponding market share which has grown from zero to approximately 27% in the same time period. In light of the foregoing, it is my opinion that the T-System template chart may in good faith be accurately regarded as a commercial success, and that this success is solely and directly related to the claimed features of the template charts.

18. I declare that all statements made herein of my own knowledge are true and correct, and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified patent application or any patent issuing thereon.

Signed this 25<sup>th</sup> day of May, 2007.

Mark Van De Castele  
Mark Van De Castele

STATE OF Texas )  
 )  
COUNTY OF Dallas )

SUBSCRIBED AND SWORN to before me, a Notary Public, this 25<sup>th</sup> day of May, 2005.

Tina Clark  
Notary Public

My commission expires on: 05/05/2010

